

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0335
Use Tax
Calendar Years 1999, 2000, and 2001**

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ISSUE(S)

I. Use Tax– Electric Utilities

Authority: 45 IAC 2.2-5-12 (f); 45 IAC 2.2-8-12 (f); IFB #55;

Taxpayer protests tax on electricity purchased exempt.

STATEMENT OF FACTS

Taxpayer is a qualified bulk distributor of motor fuel from two locations in Indiana. They also operate several convenience stores in Indiana with sales of motor fuel through metered pumps, as well as sales of convenience items.

Upon audit, it was discovered that the taxpayer had two electric utility meters on which the utility company was charging no sales tax. Taxpayer protests the assessment on one of its utility meter (TC) purchases because it had been audited on numerous occasions and at no time was it advised that the exemption no longer was valid. Taxpayer protests the assessment for the audit period.

I. Use Tax – Electric Utilities

DISCUSSION

Taxpayer states that it was audited previously and never advised that the exemption was no longer valid. Taxpayer states that it can accept the fact that the exemption is no longer valid but protests the position that it was invalid for the audit period. Taxpayer states that the Indiana Department of Revenue never notified them or the electric company, that the exemption was no longer valid.

On October 15, 1985 the taxpayer filed a claim for refund for sales tax paid on an electric meter that it stated was used for an exempt purpose which was approved by the Department. The

Department refunded the requested monies for 1984 and 1985.

Taxpayer's contention is that the Department issued an exemption in 1985 and has not notified them in writing that the exemption is no longer valid. The taxpayer filed a form ST-200 Sales Tax Exemption Application that was stamped approved by the Department on November 12, 1985. The taxpayer filed a claim for refund of tax on that meter for 1984 and 1985 at the time. The taxpayer has been audited since 1985 and states that there have been no adjustments to assess tax on this meter since exemption was granted sixteen years ago.

The Department determines what constitutes a valid exemption certificate as evidenced by 45 IAC 2.2-8-12 (f). In regard to the issuance of utility exemption certificates, the Department's Sales Tax Information Bulletin #55 (dated 5/31/89) details the procedure required for the taxpayer to purchase electricity exempt from tax at the time of purchase. A validated ST-109 form is required. The utility company is not allowed to accept any other exemption. Therefore, the 1985 photocopied ST-200 that the taxpayer provided to the utility company became invalid no later than 5/31/89. At that point, the utility purchases became subject to reporting of use tax under 45 IAC 2.2-3-4, the same as any other purchases on which tax was due and not remitted. The fact that the taxpayer has escaped taxation on this issue for approximately twelve years does not preclude assessment of the tax once the error is discovered.

FINDING

Taxpayer's protest is denied.